

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ENERGIZER BRANDS, LLC,

Plaintiff and Counterclaim Defendant,

v.

DURACELL U.S. OPERATIONS, INC.,

Defendant and Counterclaim Plaintiff.

CASE NO. 1:19-cv-09061-JPO

CIVIL CASE MANAGEMENT PLAN AND SCHEDULING ORDER

This Civil Case Management Plan (the “Plan”) is submitted by the parties in accordance with Fed. R. Civ. P. 26(f)(3).

1. All parties **do not consent** to conducting all further proceedings before a United States Magistrate Judge, including motions and trial. 28 U.S.C. § 636(c). The parties are free to withhold consent without adverse substantive consequences.
2. Settlement discussions **have** taken place.
3. The parties **have** conferred pursuant to Fed. R. Civ. P. 26(f).
4. Amended pleadings may not be filed and additional parties may not be joined except with leave of the Court. Any motion to amend or to join additional parties shall be filed on or before **September 18, 2020**.¹
5. Initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) shall be completed on or before **July 1, 2020**.
6. Fact Discovery
 - (a) All fact discovery shall be completed no later than **December 9, 2020**.
 - (b) Initial requests for production of documents shall be served by **June 24, 2020**.
 - (c) Initial interrogatories shall be served by **June 24, 2020**.

¹ In light of the logistical difficulties posed by the COVID-19 pandemic and the technical complexities presented by the claims and counterclaims at issue in this case, the Parties believe that this case presents unique complexities or other exceptional circumstances requiring extended discovery and related deadlines.

- (d) Depositions shall be completed by **December 9, 2020**.
- (e) Requests to admit shall be served by **November 9, 2020**.
- (f) Any of the deadlines in paragraphs 6(b) through 6(e) may be extended by the written consent of all parties without application to the Court, provided that all fact discovery is completed by the date set forth in paragraph 6(a).

7. Expert Discovery

- (a) All expert discovery, including expert depositions, shall be completed no later than **March 26, 2021**.
- (b) The party bearing the initial burden of proof shall serve its expert disclosures pursuant to Fed. R. Civ. P. 26(a)(2) on or before **January 15, 2021**.
- (c) Rebuttal expert reports shall be served on or before **February 15, 2021**.
- (d) The interim deadlines in paragraphs 7(b) and 7(c) may be extended by the written consent of all parties without application to the Court, provided that expert discovery is completed by the date set forth in paragraph 7(a).

8. All motions and applications shall be governed by the Court's Individual Practices.

9. All counsel must meet in person to discuss settlement within fourteen (14) days following the close of fact discovery.

10.

- (a) Counsel for the parties have discussed an informal exchange of information in aid of early settlement of this case and have agreed upon the following: exchange of initial disclosures.
- (b) Counsel for the parties have discussed the use of the following alternate dispute resolution mechanisms for use in this case: (i) a settlement conference before a Magistrate Judge; (ii) participation in the District's Mediation Program; and/or (iii) retention of a privately retained mediator. Counsel for the parties propose the following alternate dispute resolution mechanism for this case: none at this time.
- (c) Counsel for the parties recommend that the alternate dispute resolution mechanism designated in paragraph 10(b) be employed at the following point in the case (*e.g.*, within the next sixty days; after the deposition of plaintiff is completed (specify date); after the close of fact discovery): not applicable at this time.
- (d) The use of any alternative dispute resolution mechanism does not stay or modify any date in this Order.

11. Motions for summary judgment shall be filed on or before **April 23, 2021**. Oppositions to motions for summary judgment shall be filed on or before **May 21, 2021**. Replies in further support of motions for summary judgment shall be filed on or before **June 11, 2021**. The parties shall submit a Joint Pretrial Order prepared in accordance with Fed. R. Civ. P. 26(a)(3) and the Court's Individual Practices within thirty (30) days of a decision on such motion. If no motion for summary judgment is filed, the parties shall file the Joint Pretrial Order within thirty (30) days of the close of discovery. Any motions in limine shall be filed on or before the date on which the Joint Pretrial Order is due. If this action is to be tried before a jury, proposed voir dire, jury instructions, and verdict form shall also be filed on or before the Joint Pretrial Order due date. Counsel are required to meet and confer on a joint submission of proposed jury instructions and verdict form, noting any points of disagreement in the joint submission. Jury instructions may not be submitted after the Joint Pretrial Order due date, unless they meet the standard of Fed. R. Civ. P. 51(a) (2)(A). If this action is to be tried to the Court, proposed findings of fact and conclusions of law should be submitted on or before the Joint Pretrial Order due date.
12. The parties shall be ready for trial on **August 12, 2021**.
13. This case **is** to be tried to a jury.
14. Counsel for the parties have conferred and their present best estimate of the length of trial is **ten days**.
15. Other issues to be addressed at the Initial Pretrial Conference, including those set forth in Fed. R. Civ. P. 26(f)(3), are set forth below:
 - (a) Early settlement/resolution, and proposed dates for a settlement conference;
 - (b) Protective order; and
 - (c) Privilege log details.

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The next Case Management Conference is scheduled for _____.

This Order may not be modified or the dates herein extended, except by further Order of this Court for good cause shown. Any application to modify or extend the dates herein (except as provided in paragraph 6(f) and 7(d)) shall be made in a written application in accordance with Court's Individual Practices and shall be made no less than two (2) business days prior to the expiration of the date sought to be extended.

SO ORDERED.

J. PAUL OETKEN
United States District Judge

Dated: _____
New York, New York